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No. 425

Opinion of the Court

Appellant

Filed Oct 2-, 1900.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE LAS ANIMAS LAND GRANT COMPANY, appellant,
v.
THE UNITED STATES.
No. 45.

THE LAS ANIMAS OR VIGIL AND ST. VRAIN GRANT.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE LAS ANIMAS LAND GRANT COMPANY, appellant,
v.
THE UNITED STATES. } No. 65.

THE LAS ANIMAS OR VIGIL AND ST. VRAIN GRANT.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

The appellant in this case was the plaintiff in one of five cases instituted in the Court of Private Land Claims, each involving the same subject-matter, although the grant claimed was differently designated as the Las Animas or the Vigil and St. Vrain grant, the maximum amount claimed in any of them being placed at 4,096,346 acres. These cases were as follows:

No. 44, *James Corrigan* v. *United States*, Vigil and St. Vrain grant.

No. 128, *Thomas J. Allen et al.* v. *United States*, the Las Animas grant.

No. 135, *George W. Thompson et al.* v. *United States*, Vigil and St. Vrain or Las Animas grant.

No. 154, *Las Animas Land Grant Company* v. *United States*, Las Animas land grant.

No. 216, *Luis J. Purdy et al.* v. *United States*, Las Animas grant.

These cases were by the court ordered consolidated and to proceed as one cause under the title of *James Corrigan* v. *United States*, No. 44 (R., 30).

A somewhat unusual situation, considering the magnitude of the grant and the stupendous value of the property claimed, developed at the time appointed for trial, when none of the various claimants appeared, although the interested parties had previously received full notice (R., 31), no evidence being introduced, and the court concluding its duty to be to make such disposition of the cause as the record warranted, resort was had to the pleadings as its sole source of information; and its decision, based thereupon, was that the cause be dismissed for want of jurisdiction, "for the reason that the right to the land claimed in said suits has hitherto been lawfully acted upon and decided by Congress" (R., 31), consonant with the prohibition of jurisdiction contained in subsection fourth of section 13 of the act of March 3, 1891, establishing the Court of Private Land Claims.

The petition and answer furnish a history of the action of the political branch of this Government upon the grant. No other questions raised by the pleadings were consid-

ered by the court, for the plaintiffs failed to make any attempt to sustain by evidence their claim as a valid and subsisting one against the United States. Eliminating all portions of the pleadings except those disclosing the history of the action by Congress upon the claim, it appears that—

Under the provisions of the act of Congress of July 22, 1854, on the petition of the then claimants, after hearing testimony, the surveyor-general of the Territory of New Mexico, on September 17, 1857, recommended the grant for confirmation by Congress to the full extent claimed, transmitting his report and record of proceedings preliminary thereto to Congress as provided by said act (R., 3), the claim being known as private land claim No. 17.

By act approved June 21, 1860 (12 Stat. L., 71), and having in mind this report and recommendation of the surveyor-general, Congress confirmed the grant in the name of the original grantees, specifically providing that not more than 11 square leagues each should be confirmed to said Vigil and St. Vrain. (R., 3, 4.)

Accompanying the bill which was duly enacted into said law (H. R. No. 195) was a report by Mr. Benjamin, of the Committee on Private Land Claims (36th Cong., 1st sess., Rep. Com. No. 228), the portion of which relating to this claim (private land claim No. 17) being as follows (R., 22–24):

> The Committee on Private Land Claims, to whom were referred House bill No. 195 and various reports of the surveyor-general of the Territory of New

Mexico in relation to private land claims in said Territory, have the honor to report:

That after examination of the various claims mentioned in the letter of said surveyor-general to the Commissioner of the General Land Office, dated the 12th January, 1858, they concur in the recommendation of the said officer that the said claims should be confirmed, with two exceptions, which they now proceed to notice:

* * * * *

The second exception made by your committee is in relation to claim No. 17, which the surveyor-general recommends in favor of Cornelio Vigil and Ceran St. Vrain for the full extent embraced in a survey annexed to the papers. The quantity of land embraced in this survey does not appear; but by a close examination of some of the distances shown and a rough calculation of the others, there can not well be less than 100 square leagues, and possibly much more. Now, a reference to the petition and grant shows that the claimants, on the 8th of December, 1843, petitioned Governor Armijo, stating that they had "examined the land embraced within the Huerfano, Piripa, and Cucharas rivers to their junction with the Arkansas and Anima rivers, and, finding sufficient fertile land for cultivation, an abundance of pasture and water, etc., they pray you to grant each one of us a tract of land in the above-mentioned locality, protesting that in the coming spring we will commence operations which will be continued until the colony shall be established and settled," etc.

On the 9th of December, 1843, the governor referred this petition "to the justice of the peace of the proper jurisdiction, who will give the posses-

sion referred to by the petitioners, as this Government desires to encourage agriculture and the arts."

On the 25th of December, 1843, the two claimants presented a petition to the justice of the peace, setting forth that the governor had granted them "the public land contained in the accompanying petition," and asking the execution of his order.

Under these petitions and orders the two claimants were placed by the justice of the peace on the 2d of January, 1844, in possession; not each "of a tract of land in the above-mentioned locality," but were jointly put in possession of the whole district of country, including the lands on both banks of three tributaries of the Napesta or Arkansas River, from their mouths nearly to their sources, and without the slightest apparent warrant in the governor's order for so exorbitant a grant.

If this demarcation of boundaries by the justice of the peace had been afterwards brought to the notice of the governor and approved by him, a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly of the Mexican Congress; but your committee find no proof in the paper of approval of this action by any officer superior to the justice of the peace, and, as his power clearly could not go beyond the execution of the governor's orders, your committee can not concur in the recommendation of the surveyor-general that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed to some extent, and this involves the inquiry as to the true meaning of the words "a tract of land" claimed in the original petition.

Under the Mexican colonization law of 1824 and

the regulations of 1828 the extreme quantity allowed to be granted by the governor to any colonist was 11 square leagues. In the absence of any other guide your committee suggest that a restriction of the confirmation to an extent of 11 square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair but a liberal compliance with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe-Hidalgo.

In relation to the proper location of these tracts a difficulty would arise resulting from the fact, ascertained by your committee, that a certain number of settlers, represented to be forty of fifty, have settled on tracts of land conceded to them by the above-mentioned grantees in different parts of the tract set apart for them by the justice of the peace, so that if the two tracts of 11 leagues each were located in any part of the district of country referred to the location would necessarily exclude some of these settlers who have gone onto the land in good faith and ought not to be disturbed. This difficulty can only be avoided by surveying the tracts of these actual settlers, wherever found within the district, and deducting their area from the area of the two 11-league tracts, leaving the remainder only of these two tracts to be located in one body. To this mode of location the claimants, who were represented before your committee by Judge Watts as their counsel, and one of whom, Ceran St. Vrain, was present in person, have given their consent, and the committee has made, therefore, proper provision in the bill.

Afterwards, Congress passed another and further act in relation to this claim (act of February 25, 1869),

which was amendatory and explanatory of the act of 1860, and upon the bill so enacted, Senator Ferry, for the committee, submitted the following report (R., 24, 25):

> The Committee on Private Land Claims, to whom was referred House bill No. 1345, entitled "An act to amend an act entitled 'An act to confirm certain private land claims in the Territory of New Mexico,'" beg leave to report:
>
> Ceran St. Vrain and the heirs of Cornelio Vigil claimed, under a Spanish grant, the title to a large tract of land in the southern portion of Colorado. The tract claimed embraces two entire counties and portions of two other counties, there being now residing on the tract included in the claim of said parties over 1,000 voters of the Territory of Colorado, who are settlers upon said lands, and many of them have made valuable improvements upon said lands and claim them under the homestead and preemption laws of the United States. The cases of litigation have ensued and acts of personal conflict by reason of the conflict of claims upon said lands.
>
> By act of Congress of June 21, 1860, the claims of said Ceran St. Vrain and the heirs of Cornelio Vigil were confirmed to the extent of 11 leagues each, Congress refusing to confirm them to any greater extent, the amount of such confirmation being but a small proportion of the entire land claimed; but the claims so confirmed have never yet been located or surveyed, and their location is yet uncertain, and the parties have the right to locate them any place within the limits of their entire claim. By the terms of that act, provision was not made to compel a location of said claim.
>
> The settlers upon said lands demand that the

claimants should locate their claims, and this demand upon the part of the settlers is, in the opinion of your committee, just, and its justice has been urged upon our attention by the Delegate from Colorado, and we fully agree with him that the interests of his constituents who have settled upon said lands and the interests of the Territory require that the limits and boundaries of said claims should be settled.

The object and purpose of this bill is to provide for the immediate survey of the said claims and their location, and to quiet the title to the lands within the limits of the same.

Your committee therefore recommend the passage of the bill.

Under the provisions of this act awards of tracts of land aggregating 97,514.53 acres, the equivalent of 22 square leagues, were made to actual settlers thereupon, who received patents therefor, deriving their titles by deed from St. Vrain; the register and receiver, also, rejected other claims to tracts in said grant by derivative claimants of Vigil and St. Vrain (R., 5).

This is the history of the claim in Congress and the proceedings under the acts referred to.

It is admitted by the petition that the proceedings before the surveyor-general of New Mexico were instituted by the then owners of the grant. (R., 3.) Although the power of Congress to act upon the claim was not dependent upon the appearance of and prosecution by claimants, still it does appear by the report of the Senate committee that they were represented before it by Judge Watts as their counsel and by Ceran St. Vrain in person. (R., 24.)

The act of February 25, 1869, was passed, as the report of the committee discloses, to compel a location of the claim to the extent of the 22 leagues granted by the act of June 21, 1860, which carried no provision for compulsory location. The fifth section of the later act provides:

> *And be it further enacted*, That in case of the neglect or refusal of the said Vigil and St. Vrain, or either of them, to accept of the provisions of this act and the act to which this is amendatory, and to locate their said claims as provided therein, no suit shall be brought or proceedings instituted in any of the courts of the United States, by such party or by anyone claiming through or under them, to establish or enforce said claims, or for any cause of action founded upon the same, after six months from the passage of this act.

The act of March 3, 1891, creating and conferring jurisdiction upon the Court of Private Land Claims, provides in subsection fourth of section 13:

> No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority. (25 Stat. L., 854.)

It is believed that the trial court, under the state of the case appearing upon the record, and in view of the limitations contained in the acts of 1869 and 1891 just quoted, rightly determined the cause by dismissing the same for want of jurisdiction of the subject-matter, the right to the land claimed under the grant having hitherto been lawfully acted upon and decided by Congress. (R., 31.)

Even had the court determined this jurisdictional question differently, there was nothing in the record to justify any other judgment than a dismissal of the petition, the claimants having failed to sustain their claim by full legal proof to be presented at the hearing.

Respectfully submitted.

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Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

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